

1 space that it had previously paid half a million dollars
2 worth of rent since 1986, and then not allow Rainbow to
3 demonstrate that it had very good reason to believe that it
4 had been defrauded, and that the litigation was not a
5 frivolous kind of litigation. It was a serious and very
6 substantial litigation that Rainbow had every right to
7 pursue, and should not be held against them in any manner,
8 that they didn't construct because the litigation delayed it
9 for a period of months.

10 JUDGE CHACHKIN: I still don't see how that's
11 relevant.

12 MS. POLIVY: Well, I didn't see how the other was
13 relevant, Your Honor.

14 JUDGE CHACHKIN: If it's voluntary, they pursued
15 the litigation.

16 What does this have to do with -- how does this
17 relate to any of the issues?

18 MR. EISEN: Because the implication in the record,
19 Your Honor, from Press's cross-examination that this lawsuit
20 was somehow frivolous, and had nothing to do with any
21 significant rights that Press was -- I'm sorry -- that
22 Rainbow was seeking to enforce; that it was voluntary and
23 that was the reason for the delay in construction.

24 MR. COLE: Your Honor, I object to the
25 characterization of Press's argument. I made no reference

1 to it being frivolous. I did suggest that it was voluntary
2 and I believed the testimony indicated that it was
3 voluntary, and I gathered that Rainbow conceded it was
4 voluntary.

5 MS. POLIVY: Well, Mr. --

6 JUDGE CHACHKIN: Well, you have heard Press made
7 a -- well, clearly it's voluntary. They brought the
8 lawsuit.

9 MS. POLIVY: I think then we
10 are entitled to show the substance of the lawsuit, Your
Honor.

11 JUDGE CHACHKIN: No, no, no, we are not going to
12 go into the substance of the lawsuit. Then we are going to
13 have to bring all the witnesses, and everybody else in.

14 MS. POLIVY: Your Honor, we are not trying to
15 retry the lawsuit.

16 JUDGE CHACHKIN: Well, that's what it seems to me.

17 MS. POLIVY: We are trying to show the nature of
18 the lawsuit.

19 JUDGE CHACHKIN: Well, the nature of the lawsuit
20 is set forth in the documents. You are asking him all kinds
21 of questions concerning which go well beyond that.

22 MS. POLIVY: Your Honor, I would just move Exhibit
23 9 and we will move on.

24 JUDGE CHACHKIN: For what purpose?

25 MS. POLIVY: Well, the point, Your Honor, is --

1 JUDGE CHACHKIN: I am receiving it for the truth.
2 The fact that there was a lawsuit filed, that's the only
3 reason that --

4 MS. POLIVY: The verified complaint has been
5 allowed in. The amended complaint should certainly be
6 allowed in.

7 JUDGE CHACHKIN: The verified complaint was not
8 allowed in for the truth of the matters.

9 MS. POLIVY: We are not asserting the truth of the
10 matters, Your Honor. We are asserting --

11 JUDGE CHACHKIN: Just for the fact that it was
12 filed?

13 MS. POLIVY: -- that it was filed, and these
14 things were raised.

15 JUDGE CHACHKIN: Anyone have any objection to the
16 amended complaint?

17 MR. COLE: I object. I view it to be irrelevant,
18 Your Honor.

19 MR. SILBERMAN: What is the Staff's position?

20 MR. SILBERMAN: Same objection.

21 MS. POLIVY: How can it be irrelevant if the
22 verified complaint is in?

23 There is no way, Your Honor, that you can allow in
24 the verified complaint and not allow in the amended
25 complaint.

1 MR. SILBERMAN: Your Honor, there is material in
2 this amended complaint, notably on page 6, which I would
3 have questions of the witness relating to the financial
4 misrepresentation issue. On page 6, it's line 5, the
5 sentence, "Substantial data concerning Rainbow's future
6 economic viability will in turn prevent it from obtaining
7 long-term financing that it needs to operate the --

8 MS. POLIVY: Your Honor, he has been questioned
9 about that ad nauseam.

10 MR. SILBERMAN: But that -- may I just --

11 MS. POLIVY: You can question him.

12 MR. SILBERMAN: Let me -- may I respond to that?

13 The questions related to representations made in
14 the amended complaint and the testimony of January of 1991.
15 This document apparently was filed in July of 1991 after the
16 decision of the court in Florida and after the sixth
17 extension application was filed in June of 1991, where it
18 was represented by Rainbow that it was ready, willing and
19 able to go ahead with construction.

20 And I think the sentence I just read, which is in
21 Rainbow offered Exhibit No. 9, is relevant to the financial
22 misrepresentation issue.

23 JUDGE CHACHKIN: So what is your position? Do you
24 oppose?

25 MR. SILBERMAN: Well, I was --

1 JUDGE CHACHKIN: Do you object to admission of it
2 or you don't?

3 MR. SILBERMAN: Your Honor, I want to preserve our
4 right to ask Mr. Rey on recross about that sentence.

5 MS. POLIVY: Mr. Rey has testified -- I mean, that
6 sentence refers to long-term viability. It has nothing to
7 do with the Commission's financial qualifications.

8 Frankly, if Mr. Silberman feels he has to go back
9 at that again, I have no objection, but certainly that is no
10 reason to reject the exhibit.

11 MR. COLE: Your Honor, I continue to object to the
12 entire exhibit on relevance grounds because, as Mr.
13 Silberman correctly points out, while the copy of that I
14 have been presented with is not dated, it does appear to
15 have been prepared for submission sometime in July of 1991.
16 I believe the testimony thus far has indicated that, to the
17 extent that the Miami litigation was deemed to be a factor
18 in the Rainbow's failure to construct, it was only a factor
19 up to and including Judge Marcus's decision on June 6 of
20 1991.

21 That being the case whatever Rainbow did in that
22 litigation thereafter in the way of amending its complaint
23 or advancing additional charges appears to be me to be
24 irrelevant.

25 JUDGE CHACHKIN: Well, let me get the sequence

1 here.

2 When did Rainbow start construction?

3 MS. POLIVY: Rainbow started construction in --
4 well, it depends. Rainbow started construction all the way
5 through.

6 JUDGE CHACHKIN: I understand that, but when did
7 Rainbow --

8 MS. POLIVY: Reconsideration was denied by the --
9 well, as soon as Judge Marcus issued his order in June of
10 1991, Rainbow went back and started construction. Their
11 construction permit expired on August of 1991. They did not
12 have an unexpired construction permit again until July 30,
13 1993.

14 JUDGE CHACHKIN: So how does this have any bearing
15 on the --

16 MS. POLIVY: Well, it has a bearing --

17 JUDGE CHACHKIN: -- extension of time request, the
18 sixth extension request if it was subsequent to that
19 request?

20 MS. POLIVY: Well, Your Honor, it has a bearing on
21 the facts and circumstances surrounding the entire period
22 because that's what it goes to.

23 We have discussed here at great length why Rainbow
24 didn't go forward, why Rainbow thought that it was entitled
25 to have a unique slot at 1500 foot; why it was not voluntary

1 in the sense of frivolous or capricious that they went
2 forward.

3 JUDGE CHACHKIN: I understand that.

4 MS. POLIVY: And I think that we should be
5 permitted to show that. If we have a lawsuit that we have
6 put in the complaint on, then I think at the very least that
7 verified complaint should also -- the amended complaint
8 should also be in. There is no reason.

9 JUDGE CHACHKIN: it depends. If the amended
10 complaint was filed within the relevant time period.

11 MS. POLIVY: No, it --

12 JUDGE CHACHKIN: If it was filed after the sixth
13 extension request, and after Rainbow had commenced
14 construction following Judge Marcus's decision, then what
15 has happened subsequently has no bearing on the earlier
16 event.

17 MS. POLIVY: I beg to differ with you, Your Honor,
18 because the matters in there bear on the same time frame.
19 The amended complaint also bears on the time frame that you
20 said was significant.

21 I move its admission, Your Honor.

22 JUDGE CHACHKIN: Well, I am not going to receive
23 it since it came subsequent after the extension request, the
24 sixth extension request, and subsequent after the decision
25 by Rainbow to proceed with construction. So under those

1 circumstances the fact that there was continuing litigation,
2 which apparently eventuated in a settlement at some point,
3 is irrelevant to the issues in this case, which deal with
4 the justification for the sixth extension request.

5 MS. POLIVY: Your Honor, I move the admission of
6 Rainbow Exhibit 10.

7 JUDGE CHACHKIN: All right, Rainbow Exhibit 9 is
8 rejected.

9 (The document referred to,
10 having been previously marked
11 for identification as Rainbow
12 Exhibit No. 9, was rejected
13 for admission.)

14 JUDGE CHACHKIN: Any objection to Rainbow Exhibit
15 10?

16 MR. COLE: I object, Your Honor, on relevance
17 grounds.

18 JUDGE CHACHKIN: And that exhibit will also be
19 rejected on relevance grounds.

20 MR. COLE: Thank you, Your Honor.

21 (The document referred to,
22 having been previously marked
23 for identification as Rainbow
24 Exhibit No. 10, was rejected
25 for admission.)

1 JUDGE CHACHKIN: Go ahead, Ms. Polivy.

2 BY MS. POLIVY:

3 Q Mr. Rey, it has been suggested by Mr. Cole that
4 the litigation between Rainbow Broadcasting Company and
5 Gannett stem from Rainbow's objection to Press being on the
6 tower.

7 Was that in fact the reason?

8 MR. COLE: Objection. Leading.

9 JUDGE CHACHKIN: Sustained.

10 BY MS. POLIVY:

11 Q What was the reason that Rainbow objected to Press
12 being on the tower?

13 A That the landlord intended to duplicate the
14 singular space that Rainbow had leased back in 1986, and
15 lease it in this case to Rainbow Broadcasting.

16 Q Was there any other way that Press could have been
17 on the tower?

18 A Press could have been on the other available slot
19 on the tower, or anybody else could have been on the other
20 available slot on the tower as far as I'm concerned.

21 Q Would Rainbow have objected to that?

22 A Not at all.

23 VOIR DIRE EXAMINATION

24 JUDGE CHACHKIN: There was no technical, as I
25 understand from your testimony, in any proceedings, there

1 was no technical ground which precluded Rainbow and Press
2 from operating on the same 1500 foot slot was there?

3 THE WITNESS: There was a concern about
4 interference and whatnot. Your Honor, I think as a matter
5 of fact we had been operating since June of 1994, and there
6 was no interference that occurred. At the time in 1990,
7 January of 1991, there were consulting engineers that
8 testified on the side of Rainbow that they thought that
9 there would be inference cost. But the fact of the matter
10 is there hasn't been, Your Honor, in the last two years of
11 operation.

12 JUDGE CHACHKIN: So you are currently operating
13 with Press on the same 1500 foot slot?

14 THE WITNESS: Yes, their antenna is longer than
15 ours, but we do share the aperture and there has not been
16 interference as a matter of -- you know, as a practical
17 matter. For two years of operation, there hasn't been any
18 interference claimed by either side.

19 JUDGE CHACHKIN: Go ahead, Ms. Polivy.

20 BY MS. POLIVY:

21 Q Mr. Rey, do you have Press Exhibit 16 in front of
22 you?

23 A Yes, I do.

24 Q When did you first see that?

25 This is the transcript of the prehearing

1 conference in November 7, 1990.

2 When did you first see that prehearing transcript?

3 A Yesterday.

4 Q Had you ever read it before?

5 A No. Not before yesterday, no.

6 Q You testified that your recollection was that
7 construction was discussed during that prehearing
8 conference.

9 A That's correct.

10 Q Have you had an opportunity to review the full
11 transcript?

12 A I read it again last night peripherally.

13 Q And did you find any mention of construction?

14 A Yes, the word "construction" appeared on page 10.

15 Q Can you tell us what the context of that was as
16 you understand it?

17 A There was a sentence starting at number 3, Mr.
18 Fromberg says, "Your Honor, that would certainly -- if that
19 included the fact that they won't allow any construction to
20 take place on the antenna prior to the lease."

21 So my recollection of construction is correct, the
22 word "construction" is here. And not constructing, as I
23 said yesterday, is what I recall.

24 JUDGE CHACKIN: But this deals with Press,
25 doesn't it, Mr. Fromberg represented --

1 THE WITNESS: I believe so, Your Honor.

2 JUDGE CHACHKIN: Yes, but Mr. Fromberg is just
3 making the argument that he would be satisfied if Press
4 could not do any constructing prior to the ruling on the
5 preliminary injunction.

6 THE WITNESS: Yes, Your Honor. I am just saying
7 that from my recollection that construction was part of --
8 that construction was part of it. It's been six years since
9 it happened, and yesterday I was testifying as to my
10 recollection that it had to do with construction, and
11 construction is here.

12 You are right, it goes to the Defendant,
13 absolutely right. I am just testifying to the fact that I
14 recall something about construction, and it's contained
15 herein.

16 JUDGE CHACHKIN: All right.

17 MS. POLIVY: Thank you, Mr. Rey.

18 BY MS. POLIVY:

19 Q Mr. Rey how many employees did WDZL have?

20 MR. COLE: Objection. Irrelevant.

21 JUDGE CHACHKIN: How is that relevant?

22 MS. POLIVY: Well, it's a preliminary question to
23 what he did at WDZL and Mr. Conant.

24 JUDGE CHACHKIN: Well, what difference does it
25 make if Mr. Conant didn't supervise him? There has been

1 testimony in the record.

2 MS. POLIVY: Mr. Cole asked Mr. Rey if he was just
3 an employee, "You were just an employee of WDZL, were you
4 not?" And Mr. Rey said, "Yes."

5 I think we have a right to show in the context
6 what he did at WDZL.

7 JUDGE CHACHKIN: Overruled.

8 BY MS. POLIVY:

9 Q How many employees did WDZL have?

10 A Approximately 60.

11 Q And how many did you supervise?

12 A Approximately a third of that.

13 Q Where did you fit in the hierarchy of --

14 A WDZL -- I'm sorry.

15 Q -- executive portion of WDZL?

16 Go ahead.

17 A WDZL was run by three of us; in essence, the
18 general manager the station manager, and myself as vice
19 president of sales. The three of us basically ran the
20 station. The general manager had the last word, but the
21 three of us ran the station.

22 Q In that capacity you were vice president of sales?

23 A Yes, na'am.

24 Q How often did you meet with Howard Conant
25 regarding the station performance?

1 A We reviewed the sales side and the expense side in
2 detail at least once a quarter. There was a period of time
3 in 1983 that we were doing this on a monthly basis.

4 Q Was this a matter of simply reporting, or was
5 there more involved in your meetings?

6 A Well, it was reporting the status of the station
7 in detail to the principal limited partner and guarantor of
8 the loan.

9 Q Did Rainbow Broadcasting Company have
10 shareholders?

11 A No, they did not. They had partners with
12 interest.

13 Q In your deposition in the Florida proceeding, it's
14 been discussed previously, you agreed with Mr. Hardeman,
15 Gannett's counsel, that Mr. Conant would be a Rainbow
16 Broadcasting Company shareholder.

17 Was that correct?

18 A He held shares of the positive cash flow and a
19 share of the net sales proceed. So he was a shareholder in
20 that sense.

21 Q Was he a partner?

22 A No, he was not.

23 Q Did he have a partner's share?

24 A No, he did not.

25 (Pause.)

1 MR. EISEN: Your Honor, I am going to distribute
2 some further documents as Rainbow Exhibit 11.

3 MS. POLIVY: Your Honor, we are now distributing a
4 document entitled "Order of Remand from the United States
5 District Court, Southern District of Florida," four pages
6 signed by Stanley Marcus as the District Court judge on the
7 5th day of June 1992.

8 JUDGE CHACHKIN: The document describe is marked
9 for identification as Rainbow Exhibit 11.

10 (The document referred to was
11 marked for identification as
12 Rainbow Exhibit No. 11.)

13 BY MS. POLIVY:

14 Q Mr. Rey, before we get to that I would like to ask
15 you one question.

16 For the period of August 1990, the end of August
17 1990, which was the end of the Supreme Court's review of the
18 Rainbow decision, until August 1, 1993, which was the day
19 after the FCC grant of reconsideration reinstating Rainbow's
20 construction permit, could you tell us when Rainbow had an
21 unexpired and valid construction permit precisely?

22 A It was from August 30th of 1990 to July of 1991.

23 Q And during that period what portion of that time
24 was Rainbow unable to go forward with construction because
25 the landlord was under a court order not to construct?

1 MR. COLE: Objection.

2 JUDGE CHACHKIN: Sustained.

3 BY MS. POLIVY:

4 Q For what period of that time, Mr. Rey, is it your
5 opinion that Rainbow was precluded from actual construction
6 because of the tower litigation and the order that Judge
7 Marcus had issued regarding the Defendant maintaining the
8 status quo?

9 A That would cover the period of time from November
10 of 1990 through June of 1991. So that would be six - seven,
11 seven and a half months.

12 Q And had the Commission acted on your request for
13 extension of time by June of 1991, would Rainbow have been
14 able to complete construction of its facility by December
15 31, 1992?

16 MR. COLE: Objection. Calls for a conclusion.

17 MS. POLIVY: It's his opinion.

18 JUDGE CHACHKIN: Sustained.

19 BY MS. POLIVY:

20 Q Mr. Rey, do you have an opinion on whether or not
21 Rainbow could have completed construction within an 18-month
22 period?

23 A Very much so.

24 Rainbow actually constructed in a seven and a half
25 month period when it constructed in 1993. It was ready to

1 go on the air in March of 1994.

2 Q And that was after the Commission --

3 A Right after the Commission granted Rainbow
4 constructed in a matter of seven and a half months.

5 Q Thank you.

6 MS. POLIVY: Your Honor, the order of remand that
7 we have asked for identification on is Judge Marcus's
8 subsequent order regarding the meaning and caveat to his
9 order on preliminary injunction, making clear that he was
10 not making any conclusion on the merits. And we ask it be
11 admitted into evidence as Rainbow Exhibit 11.

12 JUDGE CHACHKIN: Any objection?

13 MR. COLE: Objection. Relevance grounds, Your
14 Honor.

15 JUDGE CHACHKIN: Sustained. Rainbow Exhibit 11 is
16 rejected.

17 (The document referred to,
18 having been previously marked
19 for identification as Rainbow
20 Exhibit No. 11, was rejected
21 for admission.)

22 MS. POLIVY: I have no further questions.

23 JUDGE CHACHKIN: Any further questions for this
24 witness?

25 MR. COLE: I have a couple of questions, Your

1 Honor.

2 RECROSS-EXAMINATION

3 BY MR. COLE:

4 Q Mr. Rey, on redirect examination by Ms. Polivy I
5 believe you mentioned, or you testified, and please correct
6 me if I am wrong, that you understood that your Rainbow
7 construction permit was valid and in effect to July '91. I
8 believe that was your testimony.

9 Do you recall that?

10 A I believe that's when the fifth extension expired.
11 It expired, I think, towards the end of '91, to the best of
12 my recollection.

13 MR. COLE: I just want to, Your Honor, all I want
14 to do is refer the witness and counsel to Joint Exhibit 1,
15 the stipulation of the parties, which reflects that the
16 fifth extension request, and this is at Stipulation No. 14
17 on page 3, that the fifth extension request granted the
18 permit through August 5, 1991, just so the record is clear.

19 THE WITNESS: I apologize for a few days upon
20 recall.

21 MR. COLE: No further questions, Your Honor.

22 JUDGE CHACHKIN: Mr. Silberman?

23 MR. SILBERMAN: Yes, Your Honor, a few questions,
24 please.

25 JUDGE CHACHKIN: Go ahead.

1 RECROSS-EXAMINATION

2 BY MR. SILBERMAN:

3 Q Mr. Rey on Rainbow Exhibit 9, which was rejected,
4 but I have a question --

5 MS. POLIVY: I object, Your Honor. If that --

6 MR. SILBERMAN: Let me ask the question. I will
7 not refer to the exhibit.8 MS. POLIVY: Well, you can if it's within the
9 redirect.

10 JUDGE CHACHKIN: What is the question?

11 BY MR. BLOCK:

12 Q Did you eventually settle the Gannett litigation?

13 MS. POLIVY: Your Honor, I object.

14 JUDGE CHACHKIN: Well, there has been testimony
15 that it was settled.

16 MS. POLIVY: Then it's repetitive.

17 MR. SILBERMAN: Did you --

18 MS. POLIVY: I did not raise it during --

19 BY MR. SILBERMAN:

20 Q Did you settle the --

21 JUDGE CHACHKIN: I will permit the question.

22 BY MR. SILBERMAN:

23 Q Did you settle the Gannett litigation?

24 A Yes, sir.

25 Q Did you eventually agree with Gannett that Press

1 could share the top position on the tower as part of the
2 settlement?

3 MS. POLIVY: I object, Your Honor.

4 JUDGE CHACHKIN: He hasn't finished the question.

5 MS. POLIVY: Yes, he did. I object. It's beyond
6 the scope of redirect. There is no reason to open a new
7 area. It is the kind of thing -- for some reason I even
8 consider it irrelevant. Also, it's in the record.

9 JUDGE CHACHKIN: I believe it may be in the record
10 because I did ask the witness about it, and he did
11 eventually say that they in fact are sharing the 1500 foot
12 slot.

13 MR. SILBERMAN: Correct.

14 JUDGE CHACHKIN: The matter was settled.

15 MR. SILBERMAN: I am asking -- I'm sorry.

16 JUDGE CHACHKIN: Go ahead.

17 BY MR. SILBERMAN:

18 Q Did you agree with Gannett -- did you eventually
19 agree that Press could share the top position on the tower
20 as part of the settlement? Yes or no.

21 A Yes.

22 Q And wasn't that after you changed your opinion on
23 the value of Rainbow as the sixth station in the Orlando
24 market?

25 MS. POLIVY: I object to the question, Your Honor.

1 THE WITNESS: I don't understand. I don't
2 understand.

3 JUDGE CHACHKIN: The witness doesn't understand
4 the question.

5 MR. SILBERMAN: May I rephrase the question?

6 JUDGE CHACHKIN: Go ahead.

7 BY MR. SILBERMAN:

8 Q Was that after you had changed your mind about the
9 viability of the sixth station in the Orlando market?

10 MS. POLIVY: I object. This is beyond the scope
11 of redirect, and it is totally irrelevant.

12 JUDGE CHACHKIN: I will overrule the objection.

13 THE WITNESS: I think settlement took place in the
14 summer of 1993.

15 BY MR. SILBERMAN:

16 Q And was that after you had changed your mind about
17 the viability of the sixth station in the market?

18 A Yes.

19 Q And you have also testified, I believe, that you
20 paid rent, in response to questions from Ms. Polivy about
21 paying rent of approximately \$500,000?

22 A I believe the answer was 500,000 to a question
23 related between the time October '86 to August of '93. I
24 believe about a half a million dollars in rent was paid,
25 yes, sir.

1 Q If you were willing to spend that money for its
2 constructing during this time period, which was -- could you
3 tell us the time period you spent that money?

4 A I just said. The money was spent between October
5 of '86 and August of 1993.

6 Q After August 1990 until 1993, why didn't you spend
7 money on equipment and go forward with construction if you
8 were willing to spend the money on the tower rental?

9 MS. POLIVY: Objection, Your Honor. It's beyond
10 the scope of redirect. He wants to go into his cross-
11 examination again, and if he is permitted to do so, I assume
12 we are permitted to go right back again.

13 JUDGE CHACHKIN: Well, you raised the question of
14 how much money he had expended.

15 MS. POLIVY: I raised the question on how much
16 money he spent on rent. I did not raise the question as to
17 why he did or didn't buy equipment.

18 MR. SILBERMAN: Your Honor, she opened the door
19 when she asked him how much he spent on rent. I am asking
20 if he could spend the money on the rent, why couldn't --

21 JUDGE CHACHKIN: I will permit the question.

22 MR. SILBERMAN: -- he spend the money on the
23 equipment and go forward with construction of the station
24 after August 1990.

25 JUDGE CHACHKIN: I will permit the question.

1 THE WITNESS: Answer, one, is I had a contract
2 with Guy Gannett that I have to pay the rent every month.
3 So it's not that I can take that money and put it someplace
4 else. If I put it someplace else, I am in breach of my
5 lease with the landlord, and I have no tower space.

6 So your question infers that I have that money to
7 spend. I have to spend it on the contract that I signed on
8 the dotted line for. That's part of the answer.

9 The other part of the answer, as I mentioned
10 yesterday, I don't think that I can build and operate a
11 station without a valid construction permit. So if I have
12 dollar one and I can spend it either item A or item B, and I
13 am a signator to a contract with item A, I am going to take
14 dollar one and put it in item A because I am obligated to
15 that.

16 The other one, I don't think I have the right to
17 build and operate a station that I don't have a valid
18 construction permit for.

19 Q May I ask you after August 1990, the Supreme Court
20 denying the rehearing, didn't you have a valid construction
21 permit?

22 A Yes, I did so.

23 MR. SILBERMAN: Thank you very much. I have no
24 further questions.

25

1 VOIR DIRE EXAMINATION

2 JUDGE CHACHKIN: One thing I want to make clear.

3 At one point you considered the permit worthless
4 because you were going to be the sixth station in the
5 market; is that correct?

6 THE WITNESS: I believe that in late 1990, early
7 1991, in the light of the economic situation, et cetera,
8 that if Rainbow were to be the sixth station when the fifth
9 was already up and going and picking up more speed, I did
10 believe that the Rainbow permit could have been valueless
11 had that been the case right then and there.

12 Yes, sir, I did believe that.

13 JUDGE CHACHKIN: And what economic situation are
14 you talking about?

15 THE WITNESS: I am talking about the advertising
16 industry situation. Advertising budgets get planned not as
17 they happen, but they plan -- for example, in the second
18 half for mid 1990 you already can get a picture for 1991
19 advertising revenues. So towards the end of 1990 we are in
20 a recession. Advertising budgets are projected, estimated
21 to be lower in 1991, et cetera. I was a very pessimistic
22 period in time, sir.

23 JUDGE CHACHKIN: So this was late 1990. And how
24 long did you continue to believe this?

25 THE WITNESS: As 1991 evolved, especially after

1 the Gulf War ended, there was optimism in the advertising,
2 and broadcasting industry grew, and there was talk about a
3 new network flourishing in the near future. And by mid year
4 I came to know that Nielsen was going to meter the market,
5 and that made a huge difference in terms of a start-up
6 station in the audience performance as reported by meters
7 vis-a-vis as reported by diary method. And Miami went from
8 a three share to a eight share, and it was quite significant
9 what meter measurement can do to a new station.

10 So it was an evolving process. But by mid 1991, I
11 believed that it was -- viability was going to take more
12 money, and indeed it has taken more money in the actual
13 experience that we have had in the last two years. It's
14 taken a lot more money for the long term viability of the
15 station, and we were correct in thinking that it was going
16 to require more money back in 1991, and indeed have required
17 a lot more money in the actual practice.

18 JUDGE CHACHKIN: So by mid 1991, you had reviewed
19 that a sixth station in the market was viable?

20 THE WITNESS: Yes. It was going to take longer to
21 break even, much longer for the -- for the long term viable,
22 yes, sir.

23 JUDGE CHACHKIN: And when was Judge Marcus's
24 decision denying your preliminary injunction?

25 THE WITNESS: June 6th, I believe, is the date I